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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**

6 * * *

7 FEDERAL NATIONAL MORTGAGE
8 ASSOCIATION,

9 Plaintiff,

10 v.

11 RON HAUS; EVA BEROU; and LOS
12 PRADOS COMMUNITY ASSOCIATION,

13 Defendants.
14

Case No. 2:17-cv-01756-RFB-DJA

ORDER

15 **I. INTRODUCTION**

16 Before the Court is Plaintiff Federal National Mortgage Association's Motion for Summary
17 Judgment. ECF No. 26. For the following reasons, the Court grants Plaintiff's motion.

18 **II. PROCEDURAL BACKGROUND**

19 Plaintiff Federal National Mortgage Association ("Fannie Mae") sued Defendants Ron
20 Haus, Eva Berou, and Los Prados Community Association ("the HOA") on June 26, 2017. ECF
21 No. 1. Fannie Mae seeks declaratory relief that a nonjudicial foreclosure sale conducted in 2013
22 under Chapter 116 of the Nevada Revised Statutes ("NRS") did not extinguish Fannie Mae's
23 interest in a Las Vegas property. Id. To obtain the relief, Fannie Mae asserts five claims in the
24 Complaint: (1) declaratory relief under 12 U.S.C. § 4617(j)(3) against Haus and Berou; (2) quiet
25 title under 12 U.S.C. § 4617(j)(3) against Haus and Berou; (3) declaratory relief under the Fifth
26 and the Fourteenth Amendments to the United States Constitution against all Defendants; (4) quiet
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1 title under the Fifth and the Fourteenth Amendments to the United States Constitution against Haus
2 and Berou; and (5) permanent and preliminary injunction against Haus and Berou. Id. The HOA
3 answered the Complaint on October 11, 2017, and Haus and Berou answered the Complaint on
4 January 12, 2018. ECF Nos. 14, 16.

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6 Fannie Mae now moves for summary judgment. ECF No. 26. The HOA opposed the
7 motion as did Haus and Berou. ECF Nos. 27, 28. Fannie Mae filed a single reply. ECF No. 29.
8 On July 23, 2019, the Federal Housing Finance Agency filed an amicus in support of Plaintiff's
9 summary judgment motion.

10 11 **III. FACTUAL BACKGROUND**

12 The Court makes the following findings of undisputed and disputed facts.¹

13 **a. Undisputed facts**

14 This matter concerns a nonjudicial foreclosure on a property located at 5208 Las Cruces
15 Drive, Las Vegas, Nevada 89130 (the "property"). The property sits in a community governed by
16 the HOA. The HOA requires its community members to pay HOA dues.

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18 Nonparty Karen A. Cosner borrowed funds from First Magnus Financial Corporation to
19 purchase the property in 2006. To obtain the loan, Cosner executed a promissory note and a
20 corresponding deed of trust to secure repayment of the note. The deed of trust, which lists Cosner
21 as the borrower, First Magnus Financial Corporation as the lender, and Mortgage Electronic
22 Registration Systems, Inc., ("MERS") as the beneficiary, was recorded on October 9, 2006. MERS
23 recorded an assignment of the deed of trust to Nationstar. On January 15, 2013, Nationstar
24 executed an assignment of the deed of trust to Fannie Mae.
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27 ¹ The Court takes judicial notice of the publicly recorded documents related to the deed of trust and the foreclosure
28 as well as Fannie Mae's Single-Family Servicing Guide. Fed. R. Evid. 201 (b), (d); Berezovsky v. Moniz, 869 F.3d
923, 932–33 (9th Cir. 2017) (judicially noticing the Guide); Lee v. City of Los Angeles, 250 F.3d 668, 690 (9th Cir.
2001) (permitting judicial notice of undisputed matters of public record).

1 Cosner fell behind on HOA payments. From May 2012 through November 2012, the HOA,
2 through its agent, recorded a notice of delinquent assessment lien, followed by a notice of default
3 and election to sell and then a notice of foreclosure sale. On March 29, 2013, the HOA held a
4 foreclosure sale on the property under NRS Chapter 116. Defendants Ron Haus and Eva Berou
5 purchased the property at the foreclosure sale. A foreclosure deed in favor of the Buyers was
6 recorded on April 4, 2013.

8 However, Federal National Mortgage Association ("Fannie Mae") previously purchased
9 the note and the deed of trust in November 2006. While its interest was never recorded under its
10 name, Fannie Mae continued to maintain its ownership of the note and the deed of trust at the time
11 of the foreclosure. Nationstar serviced the note and was listed as the beneficiary of the deed of
12 trust, on behalf of Fannie Mae, at the time of the foreclosure.

14 The relationship between Fannie Mae and its servicers, is governed by Fannie Mae's
15 Single-Family Servicing Guide ("the Guide"). The Guide provides that servicers may act as record
16 beneficiaries for deeds of trust owned by Fannie Mae. It also requires that servicers assign the
17 deeds of trust to Fannie Mae on Fannie Mae's demand. The Guide states:

19 The servicer ordinarily appears in the land records as the mortgagee to facilitate
20 performance of the servicer's contractual responsibilities, including (but not limited
21 to) the receipt of legal notices that may impact Fannie Mae's lien, such as notices of
22 foreclosure, tax, and other liens. However, Fannie Mae may take any and all action
23 with respect to the mortgage loan it deems necessary to protect its ... ownership of
24 the mortgage loan, including recordation of a mortgage assignment, or its legal
25 equivalent, from the servicer to Fannie Mae or its designee. In the event
26 that Fannie Mae determines it necessary to record such an instrument, the servicer
must assist Fannie Mae by [] preparing and recording any required documentation,
such as mortgage assignments, powers of attorney, or affidavits; and [by] providing
recordation information for the affected mortgage loans.

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1 The Guide also allows for a temporary transfer of possession of the note when necessary
2 for servicing activities, including “whenever the servicer, acting in its own name, represents the
3 interests of Fannie Mae in ... legal proceedings.” The temporary transfer is automatic and occurs
4 at the commencement of the servicer's representation of Fannie Mae. The Guide also includes a
5 chapter regarding how servicers should manage litigation on behalf of Fannie Mae. But the Guide
6 clarifies that “Fannie Mae is at all times the owner of the mortgage note[.]” Finally, under the
7 Guide, the servicer must “maintain in the individual mortgage loan file all documents and system
8 records that preserve Fannie Mae’s ownership interest in the mortgage loan.”
9

10 Finally, the Guide “permits the servicer that has Fannie Mae’s [limited power of attorney]
11 to execute certain types of legal documents on Fannie Mae’s behalf.” The legal documents
12 include full or partial releases or discharges of a mortgage; requests to a trustee for a full or
13 partial reconveyance or discharge of a deed of trust, modification or extensions of a mortgage or
14 deed of trust; subordination of the lien of a mortgage or deed of trust, conveyances of a property
15 to certain entities; and assignments or endorsements of mortgages, deeds of trust, or promissory
16 notes to certain entities.
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18 In 2008, Congress passed the Housing and Economic Recovery Act (“HERA”), 12 U.S.C.
19 § 4511 *et seq.*, which established the Federal Housing Finance Agency (“FHFA”). HERA gave
20 FHFA the authority to oversee the government-sponsored enterprises Fannie Mae and the Federal
21 Home Loan Mortgage Corporation (“Freddie Mac”) (collectively, the “Enterprises”). In
22 accordance with its authority, FHFA placed the Enterprises, including Fannie Mae, under its
23 conservatorship in 2008. Neither FHFA nor Fannie Mae consented to the foreclosure extinguishing
24 Fannie Mae’s interest in the property in this matter.
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26 **b. Disputed Facts** 27 28

1 The parties dispute whether Fannie Mae acquired an interest in the property under Nevada
2 law.

3 **IV. LEGAL STANDARD**

4 Summary judgment is appropriate when the pleadings, depositions, answers to
5 interrogatories, and admissions on file, together with the affidavits, if any, show “that there is no
6 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”
7 Fed. R. Civ. P. 56(a); accord Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). When considering
8 the propriety of summary judgment, the court views all facts and draws all inferences in the light
9 most favorable to the nonmoving party. Gonzalez v. City of Anaheim, 747 F.3d 789, 793 (9th Cir.
10 2014). If the movant has carried its burden, the non-moving party “must do more than simply
11 show that there is some metaphysical doubt as to the material facts.... Where the record taken as
12 a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine
13 issue for trial.” Scott v. Harris, 550 U.S. 372, 380 (2007) (alteration in original) (internal quotation
14 marks omitted). It is improper for the Court to resolve genuine factual disputes or make credibility
15 determinations at the summary judgment stage. Zetwick v. Cty. of Yolo, 850 F.3d 436, 441 (9th
16 Cir. 2017) (citations omitted).

17 **V. DISCUSSION**

18 The Court finds that the claims in this case may be resolved by answering two questions:
19 a) whether the Federal Foreclosure Bar under Section 4617(j) applies to claims brought by Fannie
20 Mae and b) whether Fannie Mae’s claims under Section 4617 to preserve assets of the
21 conservatorship or the FHFA are subject to the six-year statute of limitations under Section
22 4617(b)(12)(A). The Court answers both questions in the affirmative.
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24 First, the Court finds that claims by Fannie Mae in this case should be construed as claims
25 brought by or on behalf of the FHFA as FHFA’s agent. Pursuant to HERA, Fannie Mae was
26 placed into conservatorship by FHFA in 2008. As the Ninth Circuit has explained in the context
27 of the identically situated Federal Home Loan Mortgage Corporation (“Freddie Mac”), this means
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1 that the FHFA acquired Fannie Mae’s “rights, titles, powers, and privileges with respect to its
2 assets for the life of the conservatorship.” Berezovsky v. Moniz, 869 F.3d 923, 927 (9th Cir. 2017)
3 (internal citations omitted). The foreclosure sale in this case took place at a time that Fannie Mae
4 was in conservatorship. Fannie Mae’s interest in the subject property was therefore an asset of the
5 FHFA in conservatorship at the time of the foreclosure sale. As the subject property in this case
6 was an asset of the FHFA, the Federal Foreclosure Bar applies, since the “Federal Foreclosure Bar
7 applies to any property for which the Agency serves as conservator and immunizes such property
8 from any foreclosure without Agency consent.” Id. Thus, Fannie Mae may assert the application
9 of the Federal Foreclosure Bar in this case.
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12 The Court also finds that the six-year statute of limitations under Section 4617(b)(12)(A)
13 applies to actions brought by Fannie Mae as an agent of the FHFA and while under its
14 conservatorship. The relevant portion of the statute is as follows:

15 Notwithstanding any provision of any contract, the applicable statute of
16 limitations with regard to any action brought by the [Federal Housing Finance]
17 Agency as conservator or receiver shall be--
18 (i) in the case of any contract claim, the longer of--
19 (I) the 6-year period beginning on the date on which the claim accrues; or
20 (II) the period applicable under State law; and
21 (ii) in the case of any tort claim, the longer of--
22 (I) the 3-year period beginning on the date on which the claim accrues; or
23 (II) the period applicable under State law.

24 12 U.S.C. § 4617(b)(12)(A).

25 While the explicit language of this provision only references the “Agency,” the Court’s
26 statutory analysis does not end there. “In interpreting statutes, a court’s task is to construe
27 Congress’s intent.” Chubb Custom Ins. Co. v. Space Sys./Loral, Inc., 710 F.3d 946, 958 (9th Cir.
28 2013). “Whether a statutory term is unambiguous . . . does not turn solely on dictionary definitions
of its component words. Rather, ‘[t]he plainness or ambiguity of statutory language is determined

1 [not only] by reference to the language itself, [but as well by] the specific context in which that
2 language is used, and the broader context of the statute as a whole.” Yates v. United States, 135
3 S. Ct. 1074, 1081– 82 (2015) (internal citation omitted). The clear intent of Congress in passing
4 HERA was to be able to provide a mechanism to conserve and beneficially manage the assets of
5 the FHFA. See 12 U.S.C. § 4617(b)(2)(B)(iv) (noting that FHFA has the power “to preserve and
6 conserve the assets and property of the [Enterprises]”); see also County of Sonoma v. Fed. Hous.
7 Fin. Agency, 710 F.3d 987, 993 (9th Cir. 2013) (discussing the scope of FHFA’s powers under
8 HERA). This is especially true when those assets are under conservatorship—hence, for example,
9 the creation of the Federal Foreclosure Bar by Congress. Because Fannie Mae operates under the
10 conservatorship of the FHFA and serves essentially as the FHFA’s agent with respect to the
11 disposition and sale of FHFA assets in the conservatorship, see 12 U.S.C. § 4617(b)(2)(B), it would
12 be illogical and contrary to the intent of Congress to construe the statute to mean that actions
13 brought by the FHFA’s agent Fannie Mae, would be subject to a shorter statute of limitations
14 period for actions to preserve assets than those where the FHFA is itself the named party. Indeed,
15 such a construction would serve to dissipate the assets of the FHFA and the conservatorship by
16 requiring the FHFA to nominally appear separately in each action to preserve its assets along with
17 Fannie Mae—even though the legal arguments of both entities would be identical. Rather, the
18 Court finds that the most reasonable interpretation of the statute consistent with legislative intent
19 is that Fannie Mae’s legal actions while under conservatorship and in cases seeking to preserve
20 the assets of the FHFA are subject to the federal statute of limitations that applies to “Agency”
21 actions under Section 4617(b)(12)(A).
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26 Further, the Court finds that the six-year statute of limitations for contract claims under
27 Section 4617(b)(12)(A) applies to Fannie Mae’s quiet title claim, rather than the shorter three-year
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1 limitations period for tort claims. “If a claim is dependent upon the existence of an underlying
2 contract, the claim sounds in contract, as opposed to tort.” Stanford Ranch, Inc. v. Maryland Cas.
3 Co., 89 F.3d 618, 625 (9th Cir. 1996). In this case, the quiet title claim is dependent upon the
4 underlying mortgage lien, which is itself based upon an interest created by a mortgage contract.
5 The claim is also dependent upon Fannie Mae’s underlying deed of trust and the related promissory
6 note. Thus, the Court will apply the six-year statute of limitations pursuant to Section
7 4617(b)(12)(A) to Fannie Mae’s quiet title claim.²

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9 For statute of limitations calculations, the clock begins on the day the cause of action
10 accrued. Clark v. Robison, 944 P.2d 788, 789 (Nev. 1997). A cause of action accrues “when a suit
11 may be maintained thereon.” Id. In this case, the foreclosure sale was on March 29, 2013. The
12 Court thus finds that all of Plaintiffs’ claims began to run on the date of the foreclosure sale as
13 these claims all stem from issues or disputes regarding the sale and its effect. Plaintiffs filed their
14 complaint on June 26, 2017. Plaintiff’s claims are thus timely filed.

15
16 Having found that Plaintiffs’ claims are timely filed, the Federal Foreclosure Bar, 46
17 U.S.C. § 4617(j)(3) thus resolves this matter. The Ninth Circuit has held that the Federal
18 Foreclosure Bar preempts foreclosures conducted under NRS Chapter 116 from extinguishing a
19 federal enterprise’s property interest while the enterprise is under FHFA’s conservatorship unless
20 FHFA affirmatively consented to the extinguishment of the interest. Berezovksy, 869 F.3d at 927–
21 31. Under Berezovksy, summary judgment based on the Federal Foreclosure Bar is warranted if

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25 ² As the Court has found that these claims should be construed as claims brought by the
26 FHFA, the Court is required in any case to construe the limitations period in its favor. “To the
27 extent that a statute is ambiguous in assigning a limitations period for a claim,” it “must receive a
28 strict construction in favor of the Government.” Fed. Deposit Ins. Corp. v. Former Officers &
Commissioner, 464 U.S. 386, 391 (1984)).

1 the evidence establishes that the enterprise had an interest in the property at the time of the HOA
2 foreclosure sale. Id. at 932– 33. The Court finds that the evidence establishes that Fannie Mae had
3 an interest in the property at the time of the HOA foreclosure sale.

4
5 The Court considers if Plaintiffs provided the proper foundation and sufficient evidence to
6 show that Fannie Mae acquired a property interest prior to the foreclosure sale. To establish Fannie
7 Mae’s property interest, Plaintiffs attach printouts from Fannie Mae’s Servicer and Investor
8 Reporting (“SIR”) electronic database. The printouts are accompanied by a declaration of Graham
9 Babin, an employee of Fannie Mae. Babin translates the printouts and identifies the Guide. He
10 also specifically identifies the portions of the printouts that detail the date that Fannie Mae acquired
11 the note and the deed of trust and that recount the servicing history of the loan.

12
13 The Buyers argue that these documents are insufficient to support a finding that Fannie
14 Mae had an interest in the property at the time of the foreclosure sale. Specifically, the Buyers
15 argue that the Babin declaration is insufficiently authenticated because it fails to describe how
16 Babin became familiar with the SIR database and what the policies and procedures for the use of
17 the database are.

18
19 The Court finds these arguments to be unavailing. It is not necessary for individuals to
20 testify to having personal knowledge as to the accuracy of the entries in a database. U-Haul Intern.,
21 Inc. v. Lumbermens Mut. Cas. Co., 576 F.3d 1040, 1044 (9th Cir. 2009). Rather, it is merely
22 required that the authenticating declarant has personal knowledge of the company’s recordkeeping
23 practices. Id. Babin states his familiarity with Fannie Mae’s systems “that contain data regarding
24 mortgage loans acquired and owned by Fannie Mae.” He explains what the various codes and
25 formulations within the SIR database mean. The printouts support the finding that there was a
26 servicing relationship between Fannie Mae and Nationstar at the time of the foreclosure sale. The
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1 Court finds this to be sufficient, as has the Ninth Circuit and the Nevada Supreme Court, with
2 substantially similar evidence. See, e.g., Berezovsky, 869 F.3d at 932 – 33 (allowing the Guide,
3 employee declarations and computer screenshots to establish Freddie Mac’s property interest);
4 Fed. Home Loan Mortg. Corp. v. SFR Investments Pool 1, LLC, 893 F.3d 1136, 1149–50 (9th Cir.
5 2018) (same); Nationstar Mortg., LLC v. Guberland LLC-Series 3, 420 P.3d 556 (Nev. 2018)
6 (unpublished) (Nevada Supreme Court allowing same evidence to establish an enterprise’s
7 property interest).

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9 The Court also finds that there is no evidence in the record that FHFA affirmatively
10 consented to the sale. The Ninth Circuit is clear in its construing of 12 U.S.C. § 4617j(3) that it
11 does not provide for implied consent to foreclosure sales. Berezovsky, 869 F.3d at 929. Without
12 evidence of affirmative consent, the Court will not find that FHFA consented to the sale.

13
14 Based on the foregoing, the Court grants summary judgment in favor of Plaintiffs and
15 declares that the Federal Foreclosure Bar prevented the foreclosure sale from extinguishing Fannie
16 Mae’s interest in the property. The Court finds this holding to be decisive as to all claims in this
17 matter and dismisses the remaining claims as a result.

18 19 **VI. CONCLUSION**

20
21 **IT IS ORDERED** that Plaintiff Federal National Mortgage Association’s Motion for
22 Summary Judgment (ECF No. 26) is granted. The Court declares that Defendants Ron Haus and
23 Eva Berou acquired the property subject to Fannie Mae’s deed of trust. The Clerk of the Court is
24 instructed to enter judgment accordingly.

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1 **IT IS FURTHER ORDERED** that the lis pendens filed in this case is expunged. (ECF
2 No. 2).

3 The Clerk of Court is instructed to close this case.
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5 DATED: September 30, 2019.



7 **RICHARD F. BOULWARE, II**
8 **UNITED STATES DISTRICT JUDGE**